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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

FOUNDATION AIDING
THE ELDERLY,

Petitioner,

v.

THE SUPERIOR COURT OF
ALAMEDA COUNTY,

Respondent;

COVENANT CARE CALIFORNIA, INC.
et al.,

Real Parties in Interest.

A109442

(Alameda County
Super. Ct. No. RG03-087211)

Petitioner Foundation Aiding the Elderly (FATE) seeks a peremptory writ of mandate directing respondent superior court to vacate its order finding Proposition 64 retroactive and granting judgment on the pleadings. The relief FATE seeks is warranted. As we have previously concluded, Proposition 64 is not retroactive, and thus does not bar continuation of FATE's claims that were initiated before the proposition's passage. (*Californians for Disability Rights v. Mervyn's* (2005) 126 Cal.App.4th 386.)

FACTS

In March 2003, FATE filed suit against real parties in interest Covenant Care California, Inc. and related entities (collectively, Covenant Care) upon allegations that Covenant Care failed to provide adequate staffing in its nursing homes. FATE charged

Covenant Care with violations of the Health and Safety Code, and further alleged that its conduct constituted unlawful, fraudulent, and unfair business practices proscribed by the unfair competition law (UCL). (Bus. & Prof. Code, § 17200 et seq.; Health & Saf. Code, §§ 1276.5, 1430)

In November 2004, while the case was pending, the voters approved Proposition 64 limiting private enforcement under the UCL. “Proposition 64 limits private enforcement of unfair business competition laws by providing that a private person may not bring a lawsuit unless he or she has suffered injury and lost money or property as a result of the challenged business practices, and meets the requirements for a class representative in a class action.” (*Californians for Disability Rights v. Mervyn’s, supra*, 126 Cal.App.4th at p. 391.)

Covenant Care moved for judgment on the pleadings and dismissal of FATE’s causes of action under the UCL, contending that Proposition 64 applied to pending actions and thus divested FATE of standing to pursue its claims. The trial court granted the motion. The court ordered FATE’s UCL causes of action dismissed unless public prosecutors elected to intervene in the case and assume prosecution of the claims by May 6, 2005.

FATE petitioned this court for relief, and we asked Covenant Care to state its opposition to the relief requested. We also notified the parties that we were considering issuing a peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.) Having considered the petition and opposition, we conclude that issuance of a peremptory writ is appropriate.

DISCUSSION

We have previously set forth our determination that Proposition 64 does not apply to lawsuits filed before its effective date of November 3, 2004, and need not repeat that analysis. (*Californians for Disability Rights v. Mervyn’s, supra*, 126 Cal.App.4th at pp. 391-397.) We are aware that several courts of appeal disagree with us, as Covenant Care points out. (*Bivens v. Corel Corp.* (2005) 126 Cal. App.4th 1392, 1402-1405;

Benson v. Kwikset Corp. (2005) 126 Cal.App.4th 887, 900-907; *Branick v. Downey Savings & Loan Assn.* (2005) 126 Cal.App.4th 828, 840-844.) The disagreement is founded upon an apparent conflict in canons of statutory construction and is unlikely to be resolved until our Supreme Court clarifies whether the general presumption of prospectivity applies to all legislation, as we believe, or applies only when the legislation modifies common law rights or modifies statutory rights short of a repeal or partial repeal, as some others believe.

Our belief that the prospectivity presumption applies to all legislation is based upon our high court's past application of that presumption to both modifications of common law (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208), and statutory repeals (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 839-848). We are also concerned that adoption of the statutory repeal exception advocated by Covenant Care would complicate the process of statutory construction by requiring courts to determine whether rights affected by new legislation are founded in common law or statute, and whether the legislation should be characterized as a repeal or partial repeal, as opposed to a revision. Such inquiries take the courts far afield from what should be the guiding principle when interpreting propositions: voter intent. It is the intent of the People, not formulaic standards, that should determine the reach of legislation.

DISPOSITION

Let a peremptory writ of mandate issue directing respondent superior court to vacate its February 17, 2005 order granting Covenant Care's motion for judgment on the pleadings against FATE in this action. Respondent shall issue a new order denying the motion. To permit Covenant Care an opportunity for immediate review, this decision shall be final in this court upon filing. (Cal. Rules of Court, rules 24(b)(3), 28(e)(1).)

Reardon, J.

We concur:

Kay, P.J.

Sepulveda, J.